

**UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT**

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Pacific Crane Maintenance Company, L.P.,
*for itself and as successor to Pacific Crane
Maintenance Co., Inc.; and Pacific Marine
Maintenance Company, LLC,*

Petitioners,

v.

National Labor Relations Board,

Respondent.

Case No.: 15-1181

International Longshore & Warehouse
Union,

Co-Petitioner

v.

National Labor Relations Board.

Respondent.

Case No.: 15-1185

International Association of Machinists and
Aerospace Workers, AFL-CIO, et al.,

Petitioners,

v.

National Labor Relations Board,

Respondent.

9th Cir. No. 15-71908
(Consolidated in the DC Circuit
per MCP No. 131)

CO-PETITIONER ILWU's
NON-BINDING STATEMENT OF ISSUES TO BE RAISED

Pursuant to this Court's June 24, 2015 order, petitioner International Longshore and Warehouse Union ("ILWU") hereby submits this non-binding, preliminary statement of issues to be raised in this petition for review.

This unfair labor practice proceeding before the National Labor Relations Board ("NLRB" or "Board"), based on charges filed by the International Association of Machinists ("IAM") Lodges 190 and 160, arises from the 2005 decision by Maersk, a shipping line and marine terminal operator, to discontinue its subcontract for maintenance and repair services with Pacific Marine Maintenance Company, LLC ("PMMC"), which employed workers represented by the IAM, and instead award the subcontract to Pacific Crane Maintenance Company, L.P. ("PCMC"), which has long employed workers represented by the ILWU as part of the single, multi-employer, multi-port collective bargaining unit between ILWU and Pacific Maritime Association ("PMA"). While the Administrative Law Judge had ruled in a detailed, 69 page decision that PCMC's continued recognition of ILWU as the bargaining representative of its mechanics to perform the maintenance and repair work for Maersk under the new subcontract award was lawful, the Board found otherwise, ignoring most of the ALJ's factual findings and legal analysis.

The Board first issued its decision on June 24, 2013, which was later vacated pursuant to *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014) for failure to have a

requisite quorum of Board members participating in the decision. It took the Board one year after *Noel Canning* to reissue its original ruling without change on June 17, 2015. It is this order, which is now before the Circuit on review.

The ILWU intends to raise the following issues on appeal:

1. Whether the NLRB's decision fails to adequately account for the incompatible factual findings made by the ALJ?
2. Whether PMMC and PCMC fulfilled any bargaining obligations to the IAM?
3. Whether the former IAM-represented employees have been accreted into the much larger, ILWU-represented coast-wide bargaining unit?
4. Whether the NLRB's decision is contrary to law, including, but not limited to, the United States Supreme Court's decision in *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981).
5. Whether the NLRB's decision conflicts with or fails to adequately account for prior incompatible NLRB decisions, including, but not limited to, *AG Communication Systems*, 350 NLRB 168 fn. 8 (2007) and *Northland Hub, Inc.*, 304 NLRB 665 (1991)?
6. Whether the NLRB's decision is supported by substantial evidence on the record considered as a whole?

7. Whether the lapse of time and changed circumstances since the 2007-2008 administrative trial preclude the bargaining order issued by the Board that would impose IAM representation on employees who have since at least 2005 enjoyed longshore employment as registered longshoremen for multiple employers on a coast-wide basis under the ILWU-PMA collective bargaining agreement, and most of whom have never worked for PMMC under IAM representation?

Respectfully submitted

Dated: August 6, 2015

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By: /s/ Robert S. Remar

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CERTIFICATE OF SERVICE

I hereby certify that on **August 6, 2015**, a copy of the foregoing document was served on all parties or their counsel of record through the CM/ECF system pursuant to FRAP 25(c)(2) as addressed below:

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I certify that the above is true and correct. Executed on **August 6, 2015** at San Francisco, California.

/s/ Robert S. Remar

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